HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NO. 28131 OF 1997

Between:

G. Das

… Petitioner

and

The District Collector, Hyderabad and others

… Respondents

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.No. 28131 of 1997

ORAL ORDER:

The petitioner claims to be in possession and occupation of land in Sy.Nos. 113 and 115/2, admeasuring 0.22 guntas and Ac.2.00 respectively, situated at Khairatabad Village, Hyderabad District.

According to him, the land in S.No.115/2 was part of Surf-e-khas, which in turn, devolved upon one Rabia Begum. He claims to have purchased the said land from Rabia Begum, some time in the year 1950 and that ever since he is in possession thereof.

The respondents issued a notice dated 22.10.1997 under Section 7 of the A.P. Land Encroachment Act, 1905 (for short 'the Act') requiring the petitioner to explain as to why he should not be evicted from an extent of Ac.3.00 guntas of land in Sy.No.115/1 of Khairatabad Revenue Village, corresponding to Town Survey No.3/1, Part, Block K of Ward No.89.

The petitioner challenges the notice on several grounds. He

states that seeking his eviction from that very land, the respondents-Government filed LGC No.49 of 1990 before the Special Court under the A.P. Land Grabbing (Prohibition) Act and that the same was dismissed on 30.6.1994. He contends that once it was held that he is not a land grabber in respect of the land, initiation of proceedings under the Act, is untenable. He seeks a Mandamus to declare that the respondents 1 to 4 cannot invoke the provisions of the Act, when the dispute between the same parties was already decided finally by the Special Court in LGC No.49 of 1990.

The respondents filed a counter affidavit opposing the writ petition. It is stated that the petitioner had occupied the Government land in Sy.No.115/1 without any entitlement and to recover the possession thereof, LGC No.49 of 1990 was filed. It is their case that a specific issue was framed in LGC No.49 of 1990 as to the identity of the land and a clear finding was recorded to the effect that the petitioner had encroached upon the land in Sy.No.115/1, but on finding that the Government itself received the land revenue and other amounts vis-à-vis the said land, it was held that the petitioner cannot be treated as a land grabber. Reference is made to the observation of the Special Court to the effect that the proceedings under the Act can be initiated against the petitioner.

Sri C.R. Pratap Reddy, learned counsel for the petitioner, submits that the petitioner did not claim any right over the land in Sy.No.115/1 and the attempt on the respondents 1 to 4 is only to evict him from the land in Sy.No.115/2 under the guise of eviction from Sy.No.115/1. He submits that the observation made by the Special Court that the petitioner is in unauthorised occupation of land in Sy.No.115/1, cannot be treated as binding or valid since the Special Court itself refused to take cognisance of the case against the petitioner. It is also his contention that unless the respondents resolve the dispute as to the identity and location of the land, the present notice cannot be proceeded with.

Sri A. Satya Prasad, learned Special Government Pleader appearing for the respondents, on the other hand, submits that on the basis of the plea raised by the petitioner about the identity of the land, specific issues were framed by the Special Court in LGC No.49 of 1990 and having suffered a finding against him, the petitioner cannot ignore it. He contends that the Special Court refused to grant relief to the Government only on the ground that the possession of the petitioner over the land in question was acknowledged, but left it open to them to initiate proceedings under the Act. He raised objection as to the maintainability of the writ petition against a notice.

The Act provides for removal of encroachments upon the

Government lands. Before an order of eviction is passed under Section 6 of the Act, the authorities are under obligation to issue a notice under Section 7 thereof requiring the affected person to explain. The petitioner was issued a notice under Section 7 and the same is challenged in the writ petition.

The courts would be slow to interfere with the notices issued under the relevant provisions of law. The reason is that the explanation that may be offered by the affected parties is required to be considered by the competent authority and the person can be said to have suffered grievance, if only an order adverse to his interest is passed, without accepting his explanation. Further, remedies of appeals and revisions exist. The occasion for this court to interdict proceedings at the stage of notice would arise only when the notice is issued by an authority not conferred with the power, or when there does not exist any basis, even if the admitted facts are taken into account.

In the instant case, the petitioner does not contend that the 3rd respondent does not have power to issue the impugned notice. Further, the question whether the petitioner had encroached upon the land mentioned in the notice is a pure question of fact, which can be decided only after the verification of the relevant record.

The contention advanced on behalf of the petitioner that the dispute referable to the impugned notice has already been

resolved in LGC No.49 of 1990, cannot be accepted. The reason is that though the Special Court recorded a finding that the petitioner is in unauthorised occupation of 9663 square metres of land in Sy.No.115/1 of Khairatabad Village, it left the matter open to be dealt with under the Act, by observing that the petitioner cannot be treated as a land grabber. The learned counsel for the petitioner insists that the judgment in LGC No.49 of 1990 is a nullity since the Special Court found that no case is made out to prove that the petitioner is a land grabber. This contention negates the very plea raised in the writ petition that the controversy was decided finally in LGC No.49 of 1990.

The judgments of the Apex Court in **KIRAN SINGH V. CHAMAN PASWAN** [1], **SARWAN KUMAR AND ANOTHER V. MADAN LAL AGGARWAL** [2] and other judgments on the same point, relied upon by the learned counsel for the petitioner, do not have relevance in the present context.

Therefore, the writ petition is dismissed, leaving it open to the petitioner to submit his explanation, if not already submitted, within a period of 4 weeks from today. The respondent No.3 shall take the same into account and pass appropriate orders in accordance with law. It is made clear that the rights of the petitioner, if any, vis-à-vis the land in Sy.No.115/2, shall not be affected on account of the proceedings initiated through the

impugned notice. There shall be no order as to costs.

JUSTICE L. NARASIMHA REDDY

Date: 28/3/2007
cvm.

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[1] AIR 1954 SC 340

[2] 2003 (4) SCC 147